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VALUE - ADDED

COMMUNICATIONS

**ORIGINAL  
FILE**

July 7, 1992

Office of the Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

**RECEIVED**

**JUL - 7 1992**

Federal Communications Commission  
Office of the Secretary

**RE: Docket No. 92-77**

Enclosed are the comments of Value-Added Communications, Inc., to the above-referenced Notice of Proposed Rulemaking by the Commission.

I certify that an original of these comments is being submitted along with nine copies so that each commissioners may have a personal copy. In addition, a further copy is being submitted for filing with the Dockets Reference Room (Room 230) of the Commission.

Any questions or comments regarding this filing can be directed to my attention at (708)628-6606.

Sincerely,



Charles P. Miller  
Executive Vice President/General Counsel

Enclosures

CPM/lar

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JUL - 7 1992

Federal Communications Commission  
Office of the Secretary

Before the

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of:

Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77

**COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC.  
ON BILLED PARTY PREFERENCE FOR 0+ INTERLATA CALLS**

Charles P. Miller  
General Counsel  
Value-Added Communications, Inc.  
1901 So. Meyers Rd., Suite 530  
Oakbrook Terrace, IL 60181

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**CC Docket No. 92-77**

**COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC.  
ON BILLED PARTY PREFERENCE FOR 0+ INTERLATA CALLS**

Value-Added Communications, Inc. ("VAC"), hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the captioned docket, FCC 92-169, released May 24, 1992, in which the Commission requested comment on whether the Commission should adopt a new access plan, called "billed party preference" ("BPP"), for operator-assisted interstate, InterLATA calls dialed on a 0+ basis. VAC believes that the Commission must reject BPP because it is wholly unnecessary, anti-competitive, not cost effective, and contradictory to the legislative intent of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").

BPP is a concept that sounds good "in theory", but totally ignores the technical and economic realities inherent in its implementation. BPP also ignores the right of host locations (e.g., hotels, hospitals, prisons, restaurants, truck stops) to be compensated for the use of their telecommunications systems by their guests, patients, inmates and

patrons. In an aggregator environment, there are two billed parties, (i) the subscriber to the line and provider of the telephone instruments, and (ii) the caller. The conceptual foundation for BPP, that it would benefit consumers by focusing operator services competition for "public phone traffic" on the end user, is insupportable and would result in the "taking" of valuable property rights from host locations (i.e., the right of to be compensated by consumers for the use of a host locations telecommunications facilities) in violation of the Fifth Amendment.

VAC believes that the Commission must balance the competing rights of end users/consumers and host locations, rather than favor the rights of end users/consumers to the exclusion of host locations. VAC believes that this balancing has already been accomplished by Congress through the adoption of TOCSIA, and that the implementation of BPP would destroy the delicate balancing of the competing rights of consumers and host locations already established. Over a billion dollars has been spent by Interexchange Carriers ("IXCs") educating consumers to dial 10XXX access codes or proprietary 800 or 950 access numbers to reach their carrier of choice. BPP would effectively negate this investment and cause untold continuing consumer confusion and frustration.

The "baby bells" and other local exchange carriers' ("LECs") advocacy of BPP is an attempt to further entrench their hold over vital bottleneck facilities and to re-establish their monopoly over 0+ intraLATA calls and operator treatment. In order to avoid the need for their customers to deal with two different operators, IXCs would be forced to use the LEC as the operator service provider. Any 0 dialed traffic handled by the LECs would

be treated as 1+ traffic, in that the LEC would retain all intraLATA traffic instead of passing it on to the designated carrier. Therefore, intraLATA 0+ competition would be eliminated in the 39 states where it is already established.

If BPP were adopted, only carriers who market 1+ services to a wide customer base would be in a position to obtain 0+ presubscription customers. The time and capital required to market directly to the end user is staggering and beyond the resources of any existing Operator Service Provider (OSP), other than AT&T, MCI and Sprint (who would have little or no additional expense). Since this represents only a relatively small percentage of IXC business, capital for improving operator systems would be eliminated. Enhancements and innovations, such as those resulting directly from OSP competition - inmate services, multi-lingual operators, message forwarding, and enhanced emergency call handling, would revert to pre-1984 levels. The industry that spawned these innovations would be completely and unequivocally eliminated.

The private pay telephone industry would be crippled (perhaps fatally) by enacting BPP. Since 97% of all pay telephone calls are 0+, private pay telephone providers generally survive on the margins provided in handling 0 dialed traffic on a store and forward basis or on commissions obtained from IXCs because . Should BPP remove the carrier choice from the pay telephone provider, the economic incentives of providing the service would be completely eliminated. The ultimate result of BPP on the competitive pay phone industry would be to drive the small independent entrepreneur out of the market.

The cost estimates of implementing BPP range as high as \$2 billion, but the cost

to the overall economy is far higher. A major source of revenue would be eliminated for correctional institutions, universities, hotels and the private pay telephone industry. Store and forward telephone and premises equipment manufacturers, their dealers and customers would be forced out of business. PBX manufacturers would experience a severe decrease in demand from the hotel industry, and competition would be reduced to a triopoly (AT&T, MCI and Sprint). The cost of equipment and software necessary to implement BPP is known only to the LECs who have every conceivable motivation for understating it at this time. Every single "0" dialed call would require some level of LEC intervention and handling and eventually this additional, unnecessary cost would be paid by consumers.

The Commission also requested comments on the preclusion of traffic aggregators using automatic dialing mechanisms. Automated Operator Systems are used primarily in three environments---correctional facilities, hotels and private pay phones. Each of these environments must be addressed separately.

Throughout the nation, correctional institutions are currently upgrading their inmate telephone systems to Automated Collect Operator Systems. This is due, in large part, to the fraud experienced by the institutions, and the need for enhanced investigative capabilities provided as an integral part of these new inmate telephone systems. Fraud, in this environment, can range as high as 35%, most of which is directly attributable to live operator services. Automated Collect Operator Systems typically reduce this fraud to manageable levels. Some state facilities require that inmates dial a PIN number that the telephone system has been programmed to associate with specific prescreened,

allowed telephone numbers. Typically, these institutions require that calls to prison personnel, public officials and law enforcement agencies be blocked. Without these new inmate telephone systems this would be at best difficult, if not impossible. The new inmate systems also provide extensive investigative capabilities including multi-track recording devices and call record database matching. These systems have played important roles in capturing escaped inmates, and are considered a valuable tool by the correctional and law enforcement communities. The commissions paid to the institutions by providers of automated operator systems help offset the high costs of providing court ordered telephone service to inmates. Without these commissions, the taxpayers, on both the Federal and state level, would have to bear these costs. Implementation of BPP with respect to correctional facilities would cause severe harm, financially to these institutions, would frustrate the efforts of law enforcement agencies and would directly impact taxpayers. Even if BPP was to be adopted and implemented by the Commission, consistent with the Commission's interpretation of TOCSIA as excluding inmate services from the scope of "operator services" covered by TOCSIA, correctional facilities must be excluded from the requirements of BPP.

Adopting BPP would also inflict great harm on the hospitality industry. The hospitality industry, by its nature, is not confined to providing overnight lodging. As an integral part of their business, hoteliers traditionally make price/quality/convenience judgments for a wide spectrum of ancillary services, including room service, parking, laundry, valet service and convenience shops, as well as telecommunications services. Market forces within the highly competitive hospitality industry generally lead to the

unbundling of the pricing of these ancillary services from room rates. Thus room rates are kept low and the ancillary services (usually priced at a premium reflecting their added convenience) are paid for by the guests who use them (i.e. the cost causer is the rate payer). This same reasoning applies to telecommunications services. Guests are increasingly demanding more sophisticated telephone equipment and services that are steadily raising the costs of service to the hoteliers. New services such as voice messaging, fax, operator recall, PC interfaces and automatic call distributor reservation systems, as well as higher maintenance and operator salary expenses have significantly raised telecommunications costs, while the economic ability of the hotelier to afford these expectations have decreased.

Hotels rely on O+ commissions to cover their telecommunications costs and cannot provide these services to guests at a loss. Eliminating O+ commissions leaves hotels with two options to cover their costs, increasing telephone access surcharges or bundling telecommunications costs into room rates. Both of these alternatives, increased surcharges or bundled rates, extends the Commission's communications policy into the hotel market. Both options reduce the business flexibility of hoteliers, impair the price/quality/convenience judgments hotels have traditionally made concerning ancillary services and distort prices in the hotel industry. Both cost recovery options would increase room prices for hotel guests in general and distort the relationship between cost causation and guest payment. The end result of BPP will be to interject the Commission's jurisdiction between the hotel and its guests.

Another key point is that in providing telecommunications services to its guests,



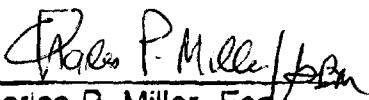
hotels are not holding themselves out to the public at large, but rather there is a contractual relationship between the hotel and its guests and the providing of such service is incidental to that relationship. In other words, the telephone instruments are not "public phones" as described by the Commission in the Notice; rather, they are "private" phones which are made available to a hotel's guests pursuant to a contractual relationship. This is likewise true for hospitals, universities, military bases and virtually all other hosts of communications users. Hotels which deal directly with their guests have an accountability which in effect prevents them from charging excessive rates or adopting unreasonable services. The Commission should not and cannot legally interject itself into this relationship.

There are approximately 350,000 smart phones installed. These would all have to be replaced at a staggering cost if BPP is mandated and Automated-Operators are prohibited. It is inconceivable that the Commission would negate the investment of thousands of small businesses, with the accompanying loss of jobs, and the expenditure of hundreds of millions of dollars, to provide 20% of pay phone users a choice that they already have.

### CONCLUSION

VAC believes that the Commission must reject BPP because It is wholly unnecessary, anti-competitive, not cost effective, and contradictory to the legislative intent of the Telephone Operator Consumer Services Improvement Act of 1990

Respectfully submitted,

By:   
Charles P. Miller, Esq.  
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DATED: July 7, 1992

### **CERTIFICATE OF SERVICE**

I, Linda A. Rehak, do hereby certify on this 7th day of July, 1992, that I have served a copy of the foregoing COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC., ON BILLED PARTY PREFERENCE FOR 0+ INTERLATA CALLS, via hand delivery or first class mail, to all parties to this docket and to the parties on the service list below.

  
Linda A. Rehak

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